

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

CLAIRMONT MELVILLE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

CASE NO. 2:06-CV-992  
CRIM. NO. 2:91-CR-023  
JUDGE GRAHAM  
MAGISTRATE JUDGE KING

**OPINION AND ORDER**

On November 17, 2008, the Magistrate Judge issued a *Report and Recommendation* recommending that petitioner's request for an evidentiary hearing be granted and that petitioner be appointed counsel to represent him at an evidentiary hearing on his claim that the prosecutor improperly failed to disclose or correct the allegedly false testimony of prosecution witness Ken Adams who denied the existence of an agreement to reduce his sentence in return for his testimony against petitioner. The Magistrate Judge further recommended that petitioner's claim of prosecutorial misconduct based upon Adams' allegedly false testimony denying that he had met with police and the prosecution prior to testifying be dismissed as without merit. Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation*. For the reasons that follow, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**.

Petitioner objects to the Magistrate Judge's recommendation of dismissal of his claim of prosecutorial misconduct as without merit. Petitioner again raises all of the same

arguments that he previously presented regarding all of his claims. Petitioner asserts that he is actually innocent of the charges against him. He refers to his PreSentence Investigation Report in support of such allegation, wherein he denied involvement in the offenses charged. *See Exhibit A to Objections.*

Pursuant to 28 U.S.C. §636(b)(1), this Court has conducted a *de novo* review of the Magistrate Judge's *Report and Recommendation*. For the reasons detailed therein, this Court likewise concludes that petitioner's claim of prosecutorial misconduct based upon the prosecutor's failure to disclose or correct Adams' allegedly false testimony denying that he had met with police or the prosecutor prior to testifying lacks merit. The Court also concludes that the record warrants an evidentiary hearing on petitioner's remaining claim of prosecutorial misconduct.

Therefore, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. Petitioner shall be appointed counsel to represent him at an evidentiary hearing on his claim that the prosecutor improperly failed to disclose or correct the allegedly false testimony of Ken Adams regarding the existence of an agreement to reduce his sentence in return for testifying against petitioner. Petitioner's remaining claim relating to Adams' allegedly false testimony regarding whether or not he had met with police and prosecution prior to testifying is **DISMISSED**.

**IT IS SO ORDERED.**

Date: January 7, 2009

S/ James L. Graham  
JAMES L. GRAHAM  
United States District Judge